

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of

Review of the Commission's Rules
 regarding the main studio and
 local public inspection files of
 broadcast television and radio
 stations

47 C.F.R. §§ 73.1125, 73.3526
 and 73.3527

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MM Docket No. 97-138

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF KALI-FM, INC. AND POLYETHNIC BROADCASTING, INC.

KALI-FM, Inc. ("KALI") and Polyethnic Broadcasting, Inc. ("Polyethnic"), by their counsel, hereby submit these comments in response to the Commission's Notice of Proposed Rule Making, 62 Fed. Reg. 32061, released June 12, 1997 ("NPRM") in the above-captioned proceeding.

INTRODUCTION

KALI and Polyethnic share common ownership. KALI operates an FM station in Santa Ana, California. Polyethnic operates an AM station in San Gabriel, California. Each station has a separate main studio in compliance with Section 73.1125 of the Commission's rules. Both stations provide ethnic programming to different portions of the Los Angeles metropolitan area. The two stations provide similar programming and would realize certain economies of scale if they could share a common main studio.

KALI and Polyethnic support a modification of Section 73.1125 to allow stations more flexibility in locating their main studios. Specifically, KALI and Polyethnic favor a more simplified approach, such as a definite distance, as the new rule. In the alternative, if the Commission finds a fixed distance rule unworkable, KALI and Polyethnic propose that in large markets served by co-owned stations, the main studio should be located in accordance with the city-grade contour of any of the co-owned stations. Furthermore, they support the Commission's proposal to modify Sections 73.3526 and 73.3527 of the Commission's rules to permit stations to maintain their public inspection files at the main studio, wherever located. The public inspection file content requirements should be updated as suggested and limited to documents related to the current owner. The licensee should not be required to maintain such items as ownership reports, issues/programs lists, or employment reports unrelated to the current owner. Finally, KALI and Polyethnic support the changes in the retention periods suggested in the NPRM.

DISCUSSION

I. *The Main Studio Rule*

A. *Background*

In the NPRM, the Commission proposes to modify Section 73.1125, which requires that stations locate their main studio within the principal community contour of the station.^{1/} The main studio rule serves to ensure that the main studio shall be easily accessible to the citizens of the community to which the station is licensed. The Commission has long believed that it is

^{1/} Section 73.24(i) of the Commission's rules requires the 5 mV/m for AM stations, 73.315(a) requires the 3.16 mV/m for FM stations and 73.685(a) requires the 74 or 77 dBu for VHF stations and the 80 dBu contour for UHF stations.

a "bedrock obligation" for every broadcast licensee to serve the needs and interests of its community. In addition, the Commission strives to ensure that community residents have reasonable access to a station's management and information.

However, the Commission also recognizes that relaxing certain regulations would allow stations to serve their community's interests more efficiently. Reasons for relaxing the rule include: (1) improvements in infrastructure would enable a studio to be more accessible to its licensing community in some cases even if it were outside the principal community contour; (2) more powerful broadcast stations can place their studios in locations where smaller stations cannot, leaving smaller stations at a competitive disadvantage and imposing on them a disproportionate burden; and (3) while recent changes to multi-station licensing rules allow a single licensee to own up to eight different stations,^{2/} the current rule requires many co-owned stations to have separate main studios unless they have overlapping contours, making coordination of programming difficult and unduly costly at the community's expense.

The Commission proposes several ways of relaxing the current rule in order to eliminate those problems. Apex Associates and others (collectively "Apex") ask the Commission to amend the current rule to require that the main studio be deemed "reasonably accessible" by the citizens of the community to which it is licensed. The Commission, however, finds the phrase "reasonably accessible," without more, too vague to meaningfully describe the bounds of permissible studio locations.

^{2/} These changes result from the Telecommunications Act of 1996. See 47 C.F.R. Section 73.3555(a) of the Commission's rules.

In lieu of the ambiguous "reasonably accessible" standard, the Commission proposes several alternatives: (1) employing a fixed distance, in miles, from the community to which the station is licensed;^{3/} (2) allowing the main studio within the principal community contour of any station licensed to the principal community, thereby extending the definition of "reasonably accessible" to the largest contour licensed to that same community; or (3) allowing the station to choose either (1) or (2).

In requesting comments on these proposals, the Commission seeks methods of relaxing the rules while ensuring that stations continue to meet the needs of their communities. In essence, the Commission aims to reduce regulatory burdens in a manner consistent with the public interest.

B. Recommendation

KALI and Polyethnic agree with the Commission that the current scheme is too restrictive and does not benefit the communities it is meant to serve. Consequently, they support the effort to create a more flexible rule governing the location of main studios.

Each of the three considerations offered by the Commission in proposing to relax the rule applies to the commenters here. The elaborate infrastructure in the Los Angeles area, including public transportation, make travel to a centrally located studio more accessible to listeners. In the Los Angeles area, higher powered Class B FM and 50 kW AM stations permit studio locations more than 50 miles from the city of license based on the transmitter site location. As a matter of fairness, smaller stations should have the same flexibility. Finally, while large

^{3/} The Commission dismissed as too vague Apex's suggestion of a "30 minute drive" standard.

markets have many group owners with a large number of commonly owned stations, the smaller operators with at least two co-owned market stations have similar needs to coordinate operations and programming, which would be aided by consolidation of the studio locations.

Under the current rules, both KALI and Polyethnic are forced to maintain two independent main studios, when one could adequately handle all business conducted for both stations. The cost to the owner is excessive, with no measurable benefit to the communities the stations serve. In fact, communities may suffer because resources better directed toward programming and other community efforts must be diverted to maintain studios that serve no useful purpose.

There are many situations where stations would benefit from sharing a main studio so that they could realize economies of scale that their redundant, and rarely used, main studios cannot. A more flexible system would allow co-owned stations like those licensed to KALI and Polyethnic that have similar programs and similar listening audiences serving the same market to maximize efficiency. As a result, they would save money and could use those savings to better serve their communities by offering more abundant and varied programming.

Of the various options presented, employing a fixed distance rule is most likely to further the Commission's objectives without creating an undue administrative burden. KALI and Polyethnic propose a fixed distance of 50 miles from the city of license. Stations whose existing main studios are currently located in excess of 50 miles from the city of license should be permitted to maintain the existing main studios, so long as they are within their respective city-grade contours.

The advantages of a fixed distance rule are manifold, both for the Commission and for licensees. Such a rule is clear-cut and easy to administer. It promotes uniformity, and allows licensees to know exactly what they can and cannot do. It leaves little room for interpretation, ambiguity, or argument. The Commission can readily determine whether licensees have complied, and will be far less burdened with requests for waivers. The coordinates for communities, large and small, are readily available.

The distance of 50 miles is reasonable, particularly since Class C FM stations generally have contours as great as 80 miles in diameter. By operation of the Commission's current rules, a Class C station could locate its main studio well in excess of 50 miles from its community of license. Fifty miles is not an unreasonable distance in light of the development of improved infrastructure throughout the nation. Furthermore, given the widespread use of telephones, facsimiles, the Internet, and other modes of communications, members of the community are less likely to visit the main studio than in the past. A fixed distance rule of 50 miles would strike an appropriate balance between the needs of the community and the burdens placed upon licensees.

In the alternative, if the Commission determines that a fixed distance rule is not desirable, KALI and Polyethnic recommend that, for large markets served by co-owned stations, the main studio should be located within the city-grade contour of any of the co-owned stations. This standard would be more cumbersome for the Commission to administer than a fixed distance rule. Yet it would still give licensees clear guidelines for locating their main studios and greater flexibility in combining main studios and enjoying the efficiencies and economies of scale that would result.

II. *Public Inspection File Rules*

A. *Public Inspection File Location*

1. Background

The Commission currently requires public inspection files to be maintained: (1) at the main studio, if that studio is located within the boundaries of the licensed community, or (2) at any accessible place in the principal community, if the studio is located outside the community of license. This requirement is consistent with the Commission's effort to keep the public informed of the station's activities and programming. However, the requirement poses the following problems: (1) because the file is not maintained at the studio, it may be mismanaged, and documents may be lost, misfiled, or even destroyed; (2) the expense of maintaining an off-premises public file is not offset by any benefit to the public; and (3) the main studio is the place people logically go to seek the public file when the studio is not located in the principal community.

To resolve these problems, Apex suggests that the public file be kept at the main studio, wherever located. Because the main studio must be "reasonably accessible," by definition the public file would also be "reasonably accessible." Moreover, locating the public file at the main studio would allow the station to supervise and regularly update it.

The Commission requests comments on the efficiencies that stations gain by allowing the public inspection file to be kept at the main studio, wherever located. Also, they would like to know the benefits to the public if such a measure were allowed.

2. Recommendation

KALI and Polyethnic support the Commission's proposal to permit stations to maintain their public inspection files at their main studios. The main studio is the most logical place for the file, because it is the place listeners are most likely to go to see the file. The main studio is generally the most widely advertised and easily accessible location associated with the station. Its on-site employees will be most familiar with the contents of the file and therefore can assist members of the public with questions. Furthermore, having the file where the responsible employees are located will ensure that files are updated, monitored, and properly managed.

In many instances, members of the public may choose to seek other ways of obtaining information from the public inspection file without actually visiting the main studio (or any other location at which the file might be located). Given the relative ease and varied methods of communicating information, documents from the file can easily be made available without requiring a visit to physically inspect the file. KALI and Polyethnic would be willing to arrange to get documents to interested persons through facsimile, mail, e-mail, or other media in order to spare those persons from travelling to the main studio. KALI and Polyethnic would also maintain a toll-free telephone number to handle such requests.

B. Public Inspection File Contents

1. Background

Sections 73.3526 and 73.3527 enumerate the items that must be maintained in the public file. The Commission wishes to review these content requirements for obsolescence or inefficiency. The Commission proposed three changes in the requirements: (1) "The Public and Broadcasting" manual will no longer be required, as it is out-of-date; (2) the assignee of a

license will no longer be responsible for keeping file records pertinent to the station's prior owner (the assignor), such as ownership reports, programming lists and agreements and annual employment reports, because the new licensee (the assignee) should not have to reconstruct the prior licensee's public file; and (3) the phrase "all written documents" will be clarified to include forms of electronic correspondence, i.e. electronic mail or "e-mail."

2. Recommendation

KALI and Polyethnic generally agree with the Commission's proposals to clarify or update the rules as set forth in Paragraph 24 of the NPRM. With respect to the proposed changes, KALI and Polyethnic believe that an assignee should be responsible for documents related to the current owner, but not for documents related to any previous owners. There is no reason why a current licensee should be responsible for retaining documents related to prior owners, nor is there any reason why members of the public would need to see those materials in the file.

C. Retention Periods of Public File Materials

1. Background

The Telecommunications Act of 1996 expanded license terms to eight years for AM, FM and TV stations. The retention periods for documents in the public inspection file, however, are defined under older license terms: seven years for AM and FM radio, and five years for TV. The Commission intends to modify all retention periods to reflect the new eight-year license term. In addition, the Commission has considered lengthening the retention terms of those documents tied to the license term to include the period of their pendency before the Commission or the courts.

Currently, assignment and transfer applications must be kept for the duration of the license term. However, the information contained in those documents can also be found in ownership reports. To cure this redundancy, the Commission suggests that assignment and transfer documents should only be kept during the pendency of their applications before the Commission or the courts.

The Commission is uncertain as to proper retention periods for some materials and asks for comments regarding the retention periods of the following: (1) annual employment reports; (2) letters from the public (commercial stations only); and (3) letters from the public regarding violent programming.

2. Recommendation

KALI and Polyethnic concur with the Commission's proposal to extend the retention period to eight years, provided the reports concern the current owner and not a prior licensee.

CONCLUSION

KALI and Polyethnic support the Commission's endeavor to broaden the main studio rule and related requirements. Allowing stations to locate their main studios within a fixed distance of 50 miles of their community of license would best serve that goal. Likewise, permitting stations to maintain their public inspection files at the main studio is a favorable change. The

public inspection file content requirements should be updated as suggested. The contents of the file should pertain only to the current owner, and not to prior owners.

Respectfully submitted,

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August 8, 1997